1952.

File No. B Shops & Estts/52

Legal Department.

B. **BRANCH**

Subject:—

L.A. Bill No XXVIII of 1952.

A Bill to amend the Bombay Shops and Establishments Act 1948

Bom Act XXVIII of 1952

LEGAL DEPARTMENT.

A requisite draft Bill is sent herewith.

Clause 2.- To cover charitable trusts which have establishments but are not maintained for purposes of gain, the words "whether for purposes of gain or not" may be inserted after the words "carries on" in section 2(4), where they occur for the second time.

To make the definitions of commercial establishment and shop mutually exclusive what appears necessary is to insert the word "primararily" before the word "used" in section 2(27). No change is necessary in section 2(4).

Clauses 7, 9 and 12.- The amendments proposed by the Department in sections 15, 22 and 29 would not achieve the object in view. Revised amendments have therefore been proposed on the lines of section 55 of the Factories Act, 1948 (LXIII of 1948).

Clause 15.- This clause is intended to make consequential amendment in section 52 in view of the amendment proposed in section 51 by clause 14.

Clause 18.- The expression "misbehaves with a customer while on duty" suggested by the Department in the new Explanation to section 66 is vague and has therefore been omitted.

Clause 19.- This clause is intended to make amendments in the rule making section 68 which are consequential to the amendments proposed in clauses 4 and 13.

2. The Bill does not require any sanction or recommendation.

Id/- J.A.D. 2/7

Secretary to Government.

U.R. to L.~~XXXX~~ I H.D. No.10514 , dated the 3rd July 1951.

KAN/28-6.
4 c.

Legal Department.

To give effect to the proposal made in the Department's note of 12th June 1952 at page 29 ante, in place of clause 13 of the draft Bill at page 21 ante, the appended draft may be substituted.

It is not necessary to add the words "and the employer shall pay him the amount payable under section 36 in respect of such leave also" at the end as proposed by the Department. Section 36 will authmatically apply to any leave due under new sub-section (1A). Similarly it is not desirable to change "such leave" into "leave" as proposed by the Department as such leave in new sub-section (1A) has reference to the leave mentioned in sub-section (1) which includes days on which the establishment remains closed.

Id/- J.R.D. 13/6

Additional Secretary to Government.

U.R. to L. & H.D. No.9933, dated 13th June 1952.

KAN/28-6.
41 C.

No.14625/B
Legal Department,
Bombay Castle(Bombay No.1), 9th September 1952.

From

Shri J.R.Dhurandhar,
Additional Secretary to the Government of Bombay,
Legal Department.

To

The Secretary to the Governor of Bombay.

Subject:- The Bombay Shops and Establishments (Amendment) Bill, 1952.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for being presented to the Governor of the authentic copy of the Bombay Shops and Establishments (Amendment) Bill, 1952, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 16th August 1952 and the 21st August 1952, respectively.

2. The subject-matter of the Bill falls under entries 31 and 33 in List II and entry 24 in List III in the Seventh Schedule to the Constitution of India. As the provisions of the Bill are repugnant to the provisions of the Bombay Shops and Establishments Act, 1948, which is an existing law relating to entry 24 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India.

3. I also forward herewith six copies of each of the items

1.	Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	Nos. 1 and
2.	Bill as read for the third time and passed by the Bombay Legislative Council.	2 and two
3.	Extracts from the proceedings of the Bombay Legislative Assembly dated the 16th August 1952 and the Bombay Legislative Council, dated the 21st August 1952.	copies of

item No.3 of the papers noted in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Id/- J.R.D. 9/9

Additional Secretary to Government.

Copy forwarded with compliments to the Secretary to the Government of Bombay, Development Department.

KAII/28-6.
4 c.

No. G. S.2834

From

Shri S.B.Kulkarni, I.A.S.,
- SECRETARY TO THE GOVERNOR OF BOMBAY

To

The Secretary to the Bombay Legislature Department,
Council Hall, Bombay 1.

Raj Bhavan,

GANESHKHIND, POONA, 7
Septr. 15, 1952.

Subject: The Bombay Shops and Establishments
- (Amendment) Bill, 1952.

Sir,

Referring to the Bombay Shops and Establishments (Amendment) Bill, 1952, which was passed by the Bombay Legislative Assembly and the Bombay Legislative Council on August 16 and August 21, 1952, respectively, I am directed to state, for the information of the Speaker and the Chairman that as the provisions of the Bill are repugnant to the provisions of the Bombay Shops and Establishments Act, 1948, which is an existing law relating to entry 24 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President vide article 254(2) of the Constitution of India. The Governor has accordingly been pleased under article 200 of the Constitution to declare that he reserves the Bill for the consideration of the President.

Yours faithfully,

Secretary to the Governor of Bombay.

. . . .

No. G.S.-2835
Office of the Secretary to the Governor,
Raj Bhavan, Ganeshkhind, Poona 7;
September 15, 1952.

Copy forwarded with compliments for information to the Additional Secretary to Government, Legal Department, with reference to his letter No. 14625, dated September 9, 1952.

Sd/- S.B. Kulkarni
Secretary to the Governor of Bombay.

KAN/28-6.
4 c.

No. GS-3335

From

THE SECRETARY TO THE GOVERNOR OF BOMBAY

To

The Additional Secretary to Government,
Legal Department, Bombay 1.

Subject:- The Bombay Shops and Establishments (Amendment) Bill, 1952.

RAJ BHAVAN,
BOMBAY,

November 4, 1952.

Sir,

In continuation of my letter No. GS-3336 dated October 24, 1952, on the above-mentioned subject, I am directed to forward herewith the authentic copy of the Bombay Shops and Establishments (Amendment) Bill, 1952, with the President's assent signified thereon.

Yours faithfully,

Sd/-

for Secretary to the Governor.

KAN/28-6.
4 c.

ACTS.

Publication of the
Bombay Shops and Establishments
(Amendment) Act, 1952.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 17356/B
Bombay Castle, 28th October 1952.

Letter to the Secretary to the Governor, No. GxSx 14625/B, dated the 9th September 1952.

Letter from the Secretary to the Governor, No. G.S. 3306, dated the 24th October 1952.

"In continuation of this office endorsement No. GS.3265 dated 6btober 21, 1952, on the above subject, I am to say that intimation has been received from the Government of India, Ministry of Home Affairs, that the President assented to the Bombay Shops and Establishments (Amendment Bill, 1952, on October 21, 1952."

RESOLUTION :- The law should be published as Bombay Act No.XXVIII of 1952 in the Bombay Government Gazette dated the 28th October 1952.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Development Department.

By order of the Governor of Bombay,

Sd/- S.W. DHURANDHAR 28/10/52
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department and 10 copies to the Development Department),
The Development Department,)
* The Examiner of Books and Publications,) with a
The Bombay Legislature Department,) copy of
The Director of Publicity, Bombay,) the Act.
The Liaison Officer of the Secretariat,)
Bombay.)

* With four extra copies of the Act.

KAN/28-6.
4 c.

REGISTERED No. B-1

The
Bombay Government Gazette
PUBLISHED BY AUTHORITY

TUESDAY, 15TH JULY 1952.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXVIII OF 1952.

A Bill to amend the Bombay Shops and Establishments Act, 1948.

Bom. LXXIX of 1948.

WHEREAS it is expedient to amend the Bombay Shops and Establishments Act, 1948, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Bombay Shops and Establishments (Amendment) Act, 1952.

(*2*) It shall come into force on such date as the State Government may by notification in the *Official Gazette* appoint.

Amendment of section 2 of Bom. LXXIX of 1948.

2. In section 2 of the Bombay Shops and Establishments Act, 1948, hereinafter referred to as the said Act,— Bom LX of

(*1*) in clause (*4*), after the words "carries on", where they occur for the second time, the words ", whether for purposes of gain or not," shall be inserted;

(*2*) for clause (*15*), the following shall be substituted, namely :—

"(*15*) 'Local authority' means a municipal corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporations Act, 1949, a municipality constituted under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, or a local board constituted under the Bombay Local Boards Act, 1923;" ; Bom. I of 1889 Bom. LIX of 1949. Bom. II of 1901. Bom. X of Bom. VI of 1923.

(*3*) in clause (*27*), for the word "used" the words "mainly used" shall be substituted.

Amendment of section 4 of Bom. LXXIX of 1948.

3. In section 4 of the said Act, in the proviso, after the words "said Schedule", where they occur for the first time, the words "subject to such conditions, if any, as may be specified in such notification" shall be inserted.

Amendment of section 8 of Bom. LXXIX of 1948.

4. In section 8 of the said Act, for the portion beginning with the words "any change" and ending with the words "taken place" the following shall be substituted, namely :—

"any change in any of the particulars contained in the statement submitted under section 7 within such period, after the change has taken place, as the State Government may prescribe in respect of any establishment or class of establishments."

Amendment of section 9 of Bom. LXXIX of 1948.

5. To section 9 of the said Act, the following proviso shall be added, namely :—

"Provided that if the Inspector does not receive the information but he is otherwise satisfied that the establishment has been closed, he may remove such establishment from such register and cancel such certificate."

Amendment of section 12 of Bom. LXXIX of 1948.

6. In section 12 of the said Act, for the proviso the following sub-sections shall be substituted, namely :—

"(*3*) The goods seized under sub-section (*2*) shall be returned to the person from whom they were seized on his depositing rupees twenty-five as security for his appearance in the Court.

(*4*) If the person fails to make the deposit the goods seized shall be produced without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit.

(*5*) Where no prosecution is instituted for contravention of the provisions of sub-section (*1*) within such period as the Magistrate may fix in this behalf, the Magistrate shall direct their return to the person from whom they were seized.

(6) Subject to the provisions of the preceding sub-section, the provisions of the Code of Criminal Procedure, 1898, shall so far as they may be applicable, apply to the disposal of the goods seized under this section." 1898.

7. For section 15 of the said Act, the following shall be substituted, namely:— Amendment of section 15 of Bom. LXXIX of 1948.

"15. The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour." Interval for rest.

8. In section 18 of the said Act, Amendment of section 18 of Bom. LXXIX of 1948.

(1) for sub-section (1), the following shall be substituted, namely:—

"(1) Every shop and commercial establishment shall remain closed on one day of the week. The employer shall prepare a calendar or list of such closed days at the beginning of the year, notify such calendar or list to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment.

(1A) Notwithstanding anything contained in sub-section (1), a shop or commercial establishment may remain open on any day notified as closed day under sub-section (1), if—

(a) it remains closed on any other day of the week; and

(b) the employer has notified to the Inspector, his intention to close the shop or the commercial establishment, as the case may be, on the day substituted under clause (a), at least seven days before the substituted day or the day notified as closed day under sub-section (1), whichever is earlier.";

(2) in sub-section (3), for the words beginning with the words "If any employee" and ending with the words "remains closed" the following shall be substituted, namely:—

"If any employee is in monthly employment of an establishment and is paid a daily rated wage or piece rated wage, he shall none the less be paid his wage for the day on which the shop or commercial establishment remains closed, at a rate equivalent to the daily average of his wages for the days on which he has actually worked during the six days preceding such closed day, exclusive of any earning in respect of overtime."

9. For section 22 of the said Act, the following shall be substituted, namely:— Amendment of section 22 of Bom. LXXIX of 1948.

"22. The period of work of an employee in a residential hotel, restaurant, or eating house each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour." Interval for rest.

10. In section 25 of the said Act, for clause (d), the following shall be substituted, namely:— Amendment of section 25 of Bom. LXXIX of 1948.

"(d) the signature (with date) of the employer or manager."

Amendment of section 28 of Bom. LXXIX of 1948.

11. For section 28 of the said Act, the following shall be substituted, namely :—

Daily hours of work in theatres or other places of public amusement or entertainment.

"28. (*1*) No employee shall be required or allowed to work in any theatre or other places of public amusement or entertainment for more than nine hours in any day.

(*2*) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under sub-section (*1*), if such period does not exceed six hours in any week."

Amendment of section 29 of Bom. LXXIX of 1948.

12. For section 29 of the said Act, the following shall be substituted, namely :—

Interval for rest.

"29. The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour."

Amendment of section 35 of Bom. LXXIX of 1948.

13. In section 35 of the said Act, after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If the services of any employee, who has been in employment for not less than a year and who has worked for ninety days or more, but for less than two hundred and seventy days during any subsequent year, are terminated in such year in the circumstances specified in sub-section (*2*), he shall, notwithstanding anything contained in sub-section (*1*), be deemed to have become entitled to such leave in such year for the number of days which bears to fourteen days the same proportion as the number of days for which he worked bears to two hundred and seventy days."

Insertion of new section 42A in Bom. LXXIX of 1948.

14. After section 42 of the said Act, the following section shall be inserted, namely :—

First Aid.

"42A. In every establishment wherein a manufacturing process as defined in clause (*k*) of section 2 of the Factories Act, 1948, is carried on, there shall be provided and maintained a first-aid box containing such articles as may be prescribed." LXIII of 1948.

Amendment of section 51 of Bom. LXXIX of 1948.

15. In section 51 of the said Act,—

(*1*) after the words "Every employer" the words "and in his absence the manager" shall be inserted;

(*2*) in the marginal note to the said section, after the word "Employer" the words "and manager" shall be inserted.

16. In section 52 of the said Act, for clause (*e*), the following shall be substituted, namely :— Amendment of section 52 of Bom. LXXIX of 1948.

"(*e*) if any employer or manager contravenes the provisions of section 51 or any employer contravenes the provisions of section 62 or 65; or"

17. In section 60 of the said Act, to sub-section (*1*), the following proviso shall be added, namely :— Amendment of section 60 of Bom. LXXIX of 1948.

"Provided that any local authority may direct that the powers conferred on it by this sub-section shall, in such circumstances and subject to such conditions, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner."

18. In section 61 of the said Act, for the words "six months of the date on which the offence is alleged to have been committed" the words "three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector" shall be substituted. Amendment of section 61 of Bom. LXXIX of 1948.

19. To section 66 of the said Act, the following *Explanation* shall be added, namely :— Amendment of section 66 of Bom. LXXIX of 1948.

"*Explanation.*—For the purposes of this section, 'misconduct' shall include—

(*a*) absence from service without notice in writing or without sufficient reasons for seven days or more;

(*b*) going on or abetting a strike in contravention of any law for the time being in force; and

(*c*) causing damage to the property of his employer."

20. In section 67 of the said Act, in sub-section (*2*),— Amendment of section 67 of Bom. LXXIX of 1948.

(*1*) in clause (*c*), for the words "the form for notifying" the words "the form and the period for notifying" shall be substituted;

(*2*) after clause (*h*), the following clause shall be inserted, namely :—

"(*ha*) the articles which a first-aid box maintained under section 42A shall contain;"

STATEMENT OF OBJECTS AND REASONS.

The working of the Bombay Shops and Establishments Act, 1948, disclosed certain deficiencies which need to be removed. The local authorities which administer the Act in their respective local areas were invited to send their suggestions for amendments, if any, in the light of practical experience. These suggestions were discussed in the meeting of the State Labour Advisory Board held in February 1951. The main features of the amending Bill, which is intended to remove the practical difficulties, are as follows :—

(1) Charitable trusts which manage large estates of their own and which have large gumasta establishments under them are more clearly brought within the purview of the Act;

(2) The employer of a shop or commercial establishment is allowed to substitute the weekly closed day by any other day of the week after a short notice;

(3) An employee in exclusive and monthly employment of an establishment and paid on piece rated wage has been given the benefit of a paid weekly holiday ;

(4) Provision is made for overtime in theatres or other places of public amusement or entertainment ;

(5) The power of sanctioning prosecutions vested in the local authority is permitted to be delegated to its standing committee or any other committee appointed by it, or if such local authority is a municipal corporation, to its Municipal Commissioner ;

(6) The period of limitation of prosecutions is to be counted from the date of the detection of the offence on the lines of the Factories Act, 1948 ;

(7) The circumstances under which it shall be open to an employer to dispense with the services of an employee without giving notice or notice pay have been defined.

(8) Proportionate leave for the period of service in the year in which he is discharged or leaves service is to be allowed to an employee who has been in service more than a year and has worked for at least ninety days in the year in which he is discharged or leaves service.

Advantage is also taken of the opportunity to make a few other minor amendments to the Act.

Dated the 14th July 1952.

(Signed) SHANTILAL H. SHAH.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Poona, dated the 14th July 1952.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXVIII OF 1952.

A Bill to amend the Bombay Shops and Establishments Act, 1948.

(As read for the third time and passed by the Legislative Assembly on the 16th August 1952.)

WHEREAS it is expedient to amend the Bombay Shops and Establishments Act, 1948, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Bom. LXXIX of 1948.

1. (*1*) This Act may be called the Bombay Shops and Establishments (Amendment) Act, 1952. Short title and commencement.

(*2*) It shall come into force on such date as the State Government may by notification in the *Official Gazette* appoint.

MO-V Bk Hb 199

Amendment of section 2 of Bom. LXXIX of 1948.

2. In section 2 of the Bombay Shops and Establishments Act, 1948, hereinafter referred to as the said Act,— Bom. LXXIX of 1948.

(*1*) in clause (*4*), after the words "carries on", where they occur for the second time, the words ", whether for purposes of gain or not," shall be inserted ;

(*2*) for clause (*15*), the following shall be substituted, namely :—

"(*15*) 'Local authority' means a municipal corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporations Act, 1949, a municipality constituted under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, or a local board constituted under the Bombay Local Boards Act, 1923 ;" ; Bom. of 18 Bom. LIX of 1949. Bom. II of 1901. Bom. XVIII of 1925. Bom. VI of 1923.

(*3*) in clause (*27*), for the word "used" the words "mainly used" shall be substituted.

Amendment of section 4 of Bom. LXXIX of 1948.

3. In section 4 of the said Act, in the proviso, after the words "said Schedule", where they occur for the first time, the words "subject to such conditions, if any, as may be specified in such notification" shall be inserted.

Amendment of section 8 of Bom. LXXIX of 1948.

4. In section 8 of the said Act, for the portion beginning with the words "any change" and ending with the words "taken place" the following shall be substituted, namely :—

"any change in any of the particulars contained in the statement submitted under section 7 within such period, after the change has taken place, as the State Government may prescribe in respect of any establishment or class of establishments."

Amendment of section 9 of Bom. LXXIX of 1948.

5. To section 9 of the said Act, the following proviso shall be added, namely :—

"Provided that if the Inspector does not receive the information but he is otherwise satisfied that the establishment has been closed, he may remove such establishment from such register and cancel such certificate."

Amendment of section 12 of Bom. LXXIX of 1948.

6. In section 12 of the said Act, for the proviso the following sub-sections shall be substituted, namely :—

"(*3*) The goods seized under sub-section (*2*) shall be returned to the person from whom they were seized, on his depositing rupees twenty-five as security for his appearance in the Court.

(*4*) If the person fails to make the deposit the goods seized shall be produced without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit.

(*5*) Where no prosecution is instituted for contravention of the provisions of sub-section (*1*) within such period as the Magistrate may fix in this behalf, the Magistrate shall direct their return to the person from whom they were seized.

(6) Subject to the provisions of the preceding sub-section, the provisions of the V of 1898. Code of Criminal Procedure, 1898, shall so far as they may be applicable, apply to the disposal of the goods seized under this section."

7. For section 15 of the said Act, the following shall be substituted, namely :— Amendment of section 15 of Bom. LXXIX of 1948.

"15. The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour." Interval for rest.

8. In section 18 of the said Act, Amendment of section 18 of Bom. LXXIX of 1948.

(1) for sub-section (1), the following shall be substituted, namely :—

"(1) Every shop and commercial establishment shall remain closed on one day of the week. The employer shall prepare a calendar or list of such closed days at the beginning of the year, notify such calendar or list to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment.

(1A) Notwithstanding anything contained in sub-section (1), a shop or commercial establishment may remain open on any day notified as closed day under sub-section (1), if—

(a) it remains closed on any other day of the week; and

(b) the employer has notified to the Inspector, his intention to close the shop or the commercial establishment, as the case may be, on the day substituted under clause (a), at least seven days before the substituted day or the day notified as closed day under sub-section (1), whichever is earlier.";

(2) in sub-section (3), the following shall be added, namely :—

"If any employee is paid a piece rated wage, he shall none the less be paid his wage for the day on which the shop or commercial establishment remains closed, at a rate equivalent to the daily average of his wages for the days on which he has actually worked during the six days preceding such closed day, exclusive of any earning in respect of overtime.";

(3) to sub-section (3), the following proviso shall be added, namely :—

"Provided that nothing in this sub-section shall apply to any person whose total period of continuous employment is less than six days".

9. For section 22 of the said Act, the following shall be substituted, namely :— Amendment of section 22 of Bom. LXXIX of 1948.

"22. The period of work of an employee in a residential hotel, restaurant, or eating house each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour." Interval for rest.

10. In section 25 of the said Act, after clause (d), the following shall be added, namely :— Amendment of section 25 of Bom. LXXIX of 1948.

"(e) the signature (with date) of the employer or manager."

Amendment of section 28 of Bom. LXXIX of 1948.

11. For section 28 of the said Act, the following shall be substituted, namely :—

Daily hours of work in theatres or other places of public amusement or entertainment.

"28. (*1*) No employee shall be required or allowed to work in any theatre or other places of public amusement or entertainment for more than nine hours in any day.

(*2*) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under sub-section (*1*), if such period does not exceed six hours in any week."

Amendment of section 29 of Bom. LXXIX of 1948.

12. For section 29 of the said Act, the following shall be substituted, namely :—

Interval for rest.

"29. The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour."

Amendment of section 35 of Bom. LXXIX of 1948.

13. In section 35 of the said Act,—

(*1*) after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If the services of an employee who has been in the employment for not less than a year and who has worked for ninety days or more, but for less than two hundred and seventy days during any subsequent year, are terminated in such year in the circumstances specified in sub-section (*2*), he shall, in addition to the leave under sub-section (*1*), become entitled to such leave in such year for the number of days which bears to fourteen days, the same proportion, as the number of days for which he worked bears to two hundred and seventy days.";

(*2*) in sub-sections (*2*) and (*3*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be inserted.

Insertion of new section 42A in Bom. LXXIX of 1948.

14. After section 42 of the said Act, the following section shall be inserted namely :—

First Aid.

"42A. In every establishment wherein a manufacturing process as defined in clause (*k*) of section 2 of the Factories Act, 1948, is carried on, there shall be provided and maintained a first-aid box containing such articles as may be prescribed." LXIII of 1948.

Amendment of section 51 of Bom. LXXIX of 1948.

15. In section 51 of the said Act,—

(*1*) after the words "Every employer" the words "and in his absence the manager" shall be inserted;

(*2*) in the marginal note to the said section, after the word "Employer" the words "and manager" shall be inserted.

16. In section 52 of the said Act, for clause (*e*), the following shall be substituted, namely :— Amendment of section 52 of Bom. LXXIX of 1948.

"(*e*) if any employer or manager contravenes the provisions of section 51 or any employer contravenes the provisions of section 62 or 65 ; or "

17. In section 60 of the said Act, to sub-section (*1*), the following proviso shall be added, namely :— Amendment of section 60 of Bom. LXXIX 1948.

" Provided that any local authority may direct that the powers conferred on it by this sub-section shall, in such circumstances and subject to such conditions, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner. "

18. In section 61 of the said Act, for the words " six months of the date on which the offence is alleged to have been committed " the words " three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector " shall be substituted. Amendment of section 61 of Bom. LXXIX of 1948.

19. To section 66 of the said Act, the following *Explanation* shall be added, namely :— Amendment of section 66 of Bom. LXXIX of 1948.

" *Explanation.*—For the purposes of this section, ' misconduct ' shall include—

(*a*) absence from service without notice in writing or without sufficient reasons for seven days or more ;

(*b*) going on or abetting a strike in contravention of any law for the time being in force ; and

(*c*) causing damage to the property of his employer."

20. In section 67 of the said Act, in sub-section (*2*),— Amendment of section 67 of Bom. LXXIX of 1948.

(*1*) in clause (*c*), for the words " the form for notifying " the words " the form and the period for notifying " shall be substituted ;

(*2*) after clause (*h*), the following clause shall be inserted, namely :—

" (*ha*) the articles which a first aid box maintained under section 42A shall contain ; "

STATEMENT OF OBJECTS AND REASONS.

The working of the Bombay Shops and Establishments Act, 1948, disclosed certain deficiencies which need to be removed. The local authorities which administer the Act in their respective local areas were invited to send their suggestions for amendments, if any, in the light of practical experience. These suggestions were discussed in the meeting of the State Labour Advisory Board held in February 1951. The main features of the amending Bill, which is intended to remove the practical difficulties, are as follows :—

(1) Charitable trusts which manage large estates of their own and which have large gumasta establishments under them are more clearly brought within the purview of the Act ;

(2) The employer of a shop or commercial establishment is allowed to substitute the weekly closed day by any other day of the week after a short notice ;

(3) An employee in exclusive and monthly employment of an establishment and paid on piece rated wage has been given the benefit of a paid weekly holiday ;

(4) Provision is made for overtime in theatres or other places of public amusement or entertainment ;

(5) The power of sanctioning prosecutions vested in the local authority is permitted to be delegated to its standing committee or any other committee appointed by it, or if such local authority is a municipal corporation, to its Municipal Commissioner ;

(6) The period of limitation of prosecutions is to be counted from the date of the detection of the offence on the lines of the Factories Act, 1948 ;

(7) The circumstances under which it shall be open to an employer to dispense with the services of an employee without giving notice or notice pay have been defined.

(8) Proportionate leave for the period of service in the year in which he is discharged or leaves service is to be allowed to an employee who has been in service more than a year and has worked for at least ninety days in the year in which he is discharged or leaves service.

Advantage is also taken of the opportunity to make a few other minor amendments to the Act.

Dated the 14th July 1952. SHANTILAL H. SHAH.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXVIII OF 1952.]

(As read for the third time and passed by the Legislative Assembly on the 16th August 1952.)

A Bill to amend the Bombay Shops and Establishments Act, 1948.

[Shri SHANTILAL H. SHAH, M.L.A.]

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PART IV

Acts of the Bombay Legislature and Ordinances promulgated and Regulations made by the Governor.

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The following Act of the Bombay Legislature having been assented to by the President on the 21st October 1952 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXVIII OF 1952.

(First published, after having received the assent of the President, in the "Bombay Government Gazette" on the 28th October 1952.)

An Act to amend the Bombay Shops and Establishments Act, 1948.

WHEREAS it is expedient to amend the Bombay Shops and Establishments Act, 1948, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Bom. LXXIX of 1948.

1. (*1*) This Act may be called the Bombay Shops and Establishments (Amendment) Act, 1952. Short title and commencement.

(*2*) It shall come into force on such date as the State Government may by notification in the *Official Gazette* appoint.

Amendment of section 2 of Bom. LXXIX of 1948.

2. In section 2 of the Bombay Shops and Establishments Act, 1948, hereinafter referred to as the said Act,— Bom. LXXIX of 1948.

(*1*) in clause (*4*), after the words "carries on", where they occur for the second time, the words ", whether for purposes of gain or not," shall be inserted ;

(*2*) for clause (*15*), the following shall be substituted, namely :—

"(*15*) 'Local authority' means a municipal corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporations Act, 1949, a municipality constituted under the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, or a local board constituted under the Bombay Local Boards Act, 1923 ; " ; Bom. III of 1888. Bom. LIX of 1949. Bom. III of Bom. XV... of 1925. Bom. VI of 1923.

(*3*) in clause (*27*), for the word "used" the words "mainly used" shall be substituted.

Amendment of section 4 of Bom. LXXIX of 1948.

3. In section 4 of the said Act, in the proviso, after the words "said Schedule", where they occur for the first time, the words "subject to such conditions, if any, as may be specified in such notification" shall be inserted.

Amendment of section 8 of Bom. LXXIX f 1948.

4. In section 8 of the said Act, for the portion beginning with the words "any change" and ending with the words "taken place" the following shall be substituted, namely :—

"any change in any of the particulars contained in the statement submitted under section 7 within such period, after the change has taken place, as the State Government may prescribe in respect of any establishment or class of establishments."

Amendment of section 9 of Bom. LXXIX of 1948.

5. To section 9 of the said Act, the following proviso shall be added, namely :—

"Provided that if the Inspector does not receive the information but he is otherwise satisfied that the establishment has been closed, he may remove such establishment from such register and cancel such certificate."

Amendment of section 12 of Bom. LXXIX of 1948.

6. In section 12 of the said Act, for the proviso the following sub-sections shall be substituted, namely :—

"(*3*) The goods seized under sub-section (*2*) shall be returned to the person from whom they were seized on his depositing rupees twenty-five as security for his appearance in the Court.

(*4*) If the person fails to make the deposit the goods seized shall be produced without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit.

(*5*) Where no prosecution is instituted for contravention of the provisions of sub-section (*1*) within such period as the Magistrate may fix in this behalf, the Magistrate shall direct their return to the person from whom they were seized.

V of 1898.

(6) Subject to the provisions of the preceding sub-section, the provisions of the Code of Criminal Procedure, 1898, shall so far as they may be applicable, apply to the disposal of the goods seized under this section."

Amendment of section 15 of Bom. LXXIX of 1948.

7. For section 15 of the said Act, the following shall be substituted, namely :—

Interval for rest.

"15. The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour."

Amendment of section 18 of Bom. LXXIX of 1948.

8. In section 18 of the said Act,

(1) for sub-section (1), the following shall be substituted, namely :—

"(1) Every shop and commercial establishment shall remain closed on one day of the week. The employer shall prepare a calendar or list of such closed days at the beginning of the year, notify such calendar or list to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment.

(1A) Notwithstanding anything contained in sub-section (1), a shop or commercial establishment may remain open on any day notified as closed day under sub-section (1), if—

(a) it remains closed on any other day of the week; and

(b) the employer has notified to the Inspector, his intention to close the shop or the commercial establishment, as the case may be, on the day substituted under clause (a), at least seven days before the substituted day or the day notified as closed day under sub-section (1), whichever is earlier.";

(2) in sub-section (3), the following shall be added, namely :—

"If any employee is paid a piece rated wage, he shall none the less be paid his wage for the day on which the shop or commercial establishment remains closed, at a rate equivalent to the daily average of his wages for the days on which he has actually worked during the six days preceding such closed day, exclusive of any earning in respect of overtime.";

(3) to sub-section (3), the following proviso shall be added, namely :—

"Provided that nothing in this sub-section shall apply to any person whose total period of continuous employment is less than six days".

Amendment of section 22 of Bom. LXXIX of 1948.

9. For section 22 of the said Act, the following shall be substituted, namely :—

Interval for rest.

"22. The period of work of an employee in a residential hotel, restaurant, or eating house each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour."

Amendment of section 25 of Bom. LXXIX of 1948.

10. In section 25 of the said Act, after clause (d), the following shall be added, namely :—

"(e) the signature (with date) of the employer or manager."

Amendment of section 28 of Bom. LXXIX of 1948.

11. For section 28 of the said Act, the following shall be substituted, namely :—

Daily hours of work in theatres or other places of public amusement or entertainment.

"28. (*1*) No employee shall be required or allowed to work in any theatre or other places of public amusement or entertainment for more than nine hours in any day.

(*2*) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under sub-section (*1*), if such period does not exceed six hours in any week."

Amendment of section 29 of Bom. LXXIX of 1948.

12. For section 29 of the said Act, the following shall be substituted, namely :—

Interval for rest.

"29. The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour."

Amendment of section 35 of Bom. LXXIX of 1948.

13. In section 35 of the said Act,—

(*1*) after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If the services of an employee who has been in the employment for not less than a year and who has worked for ninety days or more, but for less than two hundred and seventy days during any subsequent year, are terminated in such year in the circumstances specified in sub-section (*2*), he shall, in addition to the leave under sub-section (*1*), become entitled to such leave in such year for the number of days which bears to fourteen days, the same proportion, as the number of days for which he worked bears to two hundred and seventy days.";

(*2*) in sub-sections (*2*) and (*3*), after the word, brackets and figure "sub-section (*1*)" the word, brackets, figure and letter "or (*1A*)" shall be inserted.

Insertion of new section 42A in Bom. LXXIX of 1948.

14. After section 42 of the said Act, the following section shall be inserted, namely :—

First Aid.

"42A. In every establishment wherein a manufacturing process as defined in clause (*k*) of section 2 of the Factories Act, 1948, is carried on, there shall be provided and maintained a first-aid box containing such articles as may be prescribed." LXIII of 1948.

Amendment of section 51 of Bom. LXXIX of 1948.

15. In section 51 of the said Act,—

(*1*) after the words "Every employer" the words "and in his absence the manager" shall be inserted;

(*2*) in the marginal note to the said section, after the word "Employer" the words "and manager" shall be inserted.

16. In section 52 of the said Act, for clause (*e*), the following shall be substituted, namely :— Amendment of section 52 of Bom. LXXIX of 1948.

"(*e*) if any employer or manager contravenes the provisions of section 51 or any employer contravenes the provisions of section 62 or 65 ; or"

17. In section 60 of the said Act, to sub-section (*1*), the following proviso shall be added, namely :— Amendment of section 60 of Bom. LXXIX of 1948.

"Provided that any local authority may direct that the powers conferred on it by this sub-section shall, in such circumstances and subject to such conditions, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner."

18. In section 61 of the said Act, for the words "six months of the date on which the offence is alleged to have been committed" the words "three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector" shall be substituted. Amendment of section 61 of Bom. LXXIX of 1948.

19. To section 66 of the said Act, the following *Explanation* shall be added, namely :— Amendment of section 66 of Bom. LXXIX of 1948.

"*Explanation.*—For the purposes of this section, 'misconduct' shall include—

(*a*) absence from service without notice in writing or without sufficient reasons for seven days or more ;

(*b*) going on or abetting a strike in contravention of any law for the time being in force ; and

(*c*) causing damage to the property of his employer."

20. In section 67 of the said Act, in sub-section (*2*),— Amendment of section 67 of Bom. LXXIX of 1948.

(*1*) in clause (*c*), for the words "the form for notifying" the words "the form and the period for notifying" shall be substituted ;

(*2*) after clause (*h*), the following clause shall be inserted, namely :—

"(*ha*) the articles which a first aid box maintained under section 42A shall contain ;"

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXVIII OF 1952 (A BILL TO AMEND THE BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948).

Shri SHANTILAL H. SHAH (Minister for Labour) : Sir, I beg to introduce L. A. Bill No. XXVIII of 1952 (A Bill to amend the Bombay Shops and Establishments Act, 1948).*

The CHAIRMAN : L. A. Bill No. XXVIII of 1952 is introduced.

Shri SHANTILAL H. SHAH : Sir, I beg to move that L. A. Bill No. XXVIII of 1952 (A Bill to amend the Bombay Shops and Establishments Act, 1948) be read a first time.

Question proposed.

Shri SHANTILAL H. SHAH : Sir, the purpose of this Bill is to make a few amendments to carry out the spirit of the Act and I will briefly refer to the main points.

One is to bring within the scope of the Act employees of charitable trusts which manage large estates. Though the trusts are charitable, as far as the employers are concerned, they do the work of collecting rent, looking after repairs and managing the estates as if they belong to a private land owner. Therefore, it is sought to bring the employees of charitable trusts within the purview of this Act.

The second amendment is that the employer of a shop or commercial establishment is allowed to substitute the weekly closed day by any other day of the week after a week's notice. The third amendment is that an employee in exclusive and monthly employment of an establishment and paid on piece rated wage is to be paid for a holiday at a rate equivalent to daily average of his wages for the six days preceding such closed day on which he has actually worked. The next amendment is intended to provide overtime in theatres. There is already a provision in that behalf, but the rate is not specifically mentioned. The power of sanctioning prosecutions today vests in big Municipalities and Corporations. It takes a long time and, therefore, delay is caused. Authority is therefore taken to empower Municipalities and Corporations to delegate this power to their officers. The period of limitation at present counts from the day on which the offence is committed. It has happened that while investigations are going on the limitation period expires. Therefore the period of limitation will count not from the date of commission but from the date of detection. Then, Sir, the circumstances under which it shall be open to an employer to dispense with the services of an employee without giving notice or notice pay have been defined. Where a person has served for more than a year he gets leave not only for the year but for the broken period of subsequent year proportionately.

These are the main amendments and I hope that the House will accept them.

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*As read for the third time and passed by the Legislative Assembly on the 16th August 1952.

Shri R. A. KHEDGIKAR : Sir, I rise to support the Bill moved by the Hon. Minister for Labour. Barring one Bill, namely, the Bill to abolish personal inams, all the other Bills that were placed before the House today got unanimous support of this House. So, today seems to be an auspicious day. This Bill is a Bill in the right direction and it is intended to improve the service conditions of the working class. There are some defects in the existing Act and the Bill tries to remove those defects. As I said, I wholeheartedly support this Bill. My complaint is that, although the Bill is in the best interest of the shop assistants, the enforcement of the provisions of the Act is not very satisfactory because of the inadequate staff employed to enforce the provisions of the Act. In Bombay there are a number of shops which are covered by this Act and unless the number of Inspectors is increased, the object with which the Bill is moved will not be fully achieved. Wholeheartedly supporting this Bill, I request the Hon. Minister for Labour to bring many more Bills of this kind so as to complete the promises given about the welfare of the working class.

Shri SHANTILAL H. SHAH : Sir, I have not as much ambition as the hon. Member Shri Khedgikar attributes to me and I do not propose to bring many more such Bills.

As regards the complaint about enforcement, the Inspectors are appointed by the Municipalities and therefore the complaint should be lodged in quarters other than Government. All that Government do is that wherever an Inspector is appointed Government give a grant to the Municipality concerned and it is then for the Municipality to utilise the grant.

Question put, and agreed to.

Shri SHANTILAL H. SHAH : Sir, I beg to move that L. A. Bill No. XXVIII of 1952 (A Bill to amend the Bombay Shops and Establishments Act, 1948) be read a second time.

Question put, and agreed to.

Clauses 2 to 18 ordered to stand part of the Bill.

Clause 19 (*Amendment of section 66 of Bom. LXXIX of 1948*).

To section 66 of the said Act, the following *Explanation* shall be added, namely :—

" *Explanation.*—For the purposes of this section, ' misconduct ' shall include—

(*a*) absence from service without notice in writing or without sufficient reasons for seven days or more ;

(*b*) going on or abetting a strike in contravention of any law for the time being in force ; and

(*c*) causing damage to the property of his employer. "

Shri R. A. KHEDGIKAR : Sir, I beg to move—

In clause 19, in the Explanation in paragraph (*a*), in line 4, delete the words " in writing. "

Amendment proposed.

Shri R. A. KHEDGIKAR : Sir, this is a very simple amendment. It applies to various employees employed in tea-shops, restaurants, where those unfortunate employees are working.

6-00 p.m.

It is too much to expect of these employees that they should give in writing the reasons for their being absent. Many of these employees are illiterate and the employers might take

[Shri R. A. Khedgikar]

undue advantage of their illiteracy saying that their employees have not given reasons in writing for their absence and they might discharge their employees.

Shri SHANTILAL H. SHAH : Sir, I oppose the amendment. After all, when a man remains absent and if he does not know how to write, he can get the leave application written by somebody and put his thumb impression. If the application is not given in writing and if an employee tells his employer orally about the intention of his being absent then instead of doing something good there will be bad repercussions which would not lead to harmony between the employer and the employee. On the contrary, when oral notice is given to the employer, the employer might say that the employee never told him about his absence and this might lead to unnecessary litigation instead of leading to harmony between the employees and the employers. I, therefore, oppose the amendment.

Shri R. A. KHEDGIKAR : Sir, in view of the explanation given by Hon. Minister, I beg leave of the House to withdraw my amendment

Amendment, by leave, withdrawn.

The CHAIRMAN : The next two amendments may be moved together.

Shri R. A. KHEDGIKAR : Sir, I beg to move—

In clause 19, in the Explanation—

(1) delete paragraph (*b*) ;

(2) in paragraph (*c*) after the word ' damage ' insert the word ' intentionally '.

Amendments proposed.

Shri R. A. KHEDGIKAR : Sir, as far as the deletion of paragraph (*b*) in the Explanation to this clause is concerned, I have to make the following observations. Sub-clause (*b*) of clause 19 says that misconduct shall include going on or abetting a strike in contravention of any law for the time being in force. Now, Sir, for such a kind of offence there is sufficient punishment provided in the Industrial Relations Act. If a person has committed any such offence, he is punished under the provisions of that Act. Therefore, I do not wish that there should be a double punishment for the same persons for committing the same kind of offence. Under the Industrial Relations Act the court considers whether a particular strike is illegal or otherwise and after the court has decided that the strike is illegal then only the person going on such a strike is held guilty by the Court. Therefore, my only intention in moving this amendment is that the man should not be punished twice for the same offence. That is why this amendment has been moved.

The other amendment refers to those employees who are employed in restaurants and hotels. For example, damage due to the breaking of a glass occurs accidentally. If the damage is intentional, then the person causing such a damage may be punished by asking him to pay for the damage. But if any damage is done through accident, the person concerned should not be discharged, since this section refers to discharge

[Shri R. A. Khedgikar]

without notice. Therefore, my intention in moving this amendment is to see that the person should be punished only if he causes damage intentionally.

Shri SHANTILAL H. SHAH : Sir, participating in an illegal strike amounts to misconduct under the Bombay Industrial Relations Act. The punishment there provided for undertaking an illegal strike is punishment for a crime committed against the State. But in this case something wrong is going to be done to an individual employer and the man who is doing wrong to any individual should not be encouraged by the State to commit such a wrong act. It is better, therefore that the employer takes steps to remove such a wrongdoer. He does not get any punishment except that he loses his job. This is not a punishment.

The second part of the hon. Member's amendment refers to causing damage intentionally. Sir, the word "intentionally" is superfluous. One cannot cause a damage without intending to cause it. If a thing happens accidentally, it is different. But if a damage is caused, it cannot be said that it is not caused intentionally because the person must have intended to cause the damage. Causing damage cannot be accidental, it must be intentional.

I would like further to add that the hon. Member seems to labour under the misapprehension that this is a criminal law. This is a civil law, a law relating to the termination of the services of a servant. Therefore, in civil law intention is immaterial. It is only in the criminal law that intention assumes much importance. In civil law, whether a person intends doing a certain thing or not, if he has committed a breach of contract, then he has to pay for the breach. If I agree to sell 100 bales of cotton and I do not do it, then I will have to pay damages for the breach of contract whatever might be my intention in not fulfilling it. Therefore, in civil law if a person causes damage, he has to pay for the consequences. Therefore, there seems to have been some confusion in the mind of the hon. Member regarding intention as construed in civil law and as it is construed in criminal law. I think it is due to this confused idea that he has moved this amendment. I hope he will be satisfied with the explanation given by me and will withdraw his amendments.

Shri R. A. KHEDGIKAR : Sir, in view of the explanation given by the Hon. Minister, not as a Minister but as an expert lawyer, I beg leave of the House to withdraw my amendments.

Amendments, by leave, withdrawn.

Clause 19 ordered to stand part of the Bill.

Clauses 20 and 1 and the Preamble ordered to stand part of the Bill.

Shri SHANTILAL H. SHAH : Sir, I beg to move that L. A. Bill No. XXVIII of 1952 (A Bill to amend the Bombay Shops and Establishments Act, 1948) be read a third time and passed.

Question put, and agreed to.

The CHAIRMAN : L. A. Bill No. XXVIII of 1952 is read a third time and passed.

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